

**House File 2367 - Introduced**

HOUSE FILE 2367

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HF 2155)

**A BILL FOR**

1 An Act permitting the establishment of prearrest diversion  
2 programs for certain offenders.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 905.4, Code 2016, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 12. Have the authority to establish a  
4 prearrest diversion program within the judicial district.

5 Sec. 2. NEW SECTION. **905A.1 Legislative findings.**

6 The general assembly encourages local communities and public  
7 and private educational institutions to implement a prearrest  
8 diversion program that affords certain persons who fulfill  
9 specified intervention and community service obligations the  
10 opportunity to avoid an arrest record.

11 Sec. 3. NEW SECTION. **905A.2 Definitions.**

12 As used in this chapter:

13 1. "*Civil citation*" means a notice to report for orientation  
14 at a prearrest diversion program established by a judicial  
15 district.

16 2. "*Judicial district*" means a judicial district department  
17 of correctional services.

18 3. "*Person*" means an individual eighteen years of age or  
19 older.

20 Sec. 4. NEW SECTION. **905A.3 Requirements.**

21 1. *a.* A person may be issued a civil citation, at the  
22 sole discretion of a peace officer, in lieu of issuing a  
23 criminal citation or making an arrest for a simple misdemeanor  
24 offense or similar local ordinance, if the person accepts  
25 responsibility for the commission of the criminal offense, the  
26 person has not been previously been arrested as an adult for  
27 such an offense, and a prearrest diversion program has been  
28 established by the board of directors of the judicial district  
29 in which the person is found.

30 *b.* A person's acceptance of responsibility for the  
31 offense shall not be considered a confession and shall not be  
32 admissible in a criminal prosecution for the underlying simple  
33 misdemeanor offense or similar local ordinance that prompted  
34 the issuance of the civil citation.

35 2. A person shall not be allowed to participate in a

1 prearrest diversion program if the criminal offense involves a  
2 victim and the victim objects to the participation.

3 3. A civil citation is not subject to examination or  
4 disclosure under chapter 22.

5 Sec. 5. NEW SECTION. 905A.4 Prearrest diversion program —  
6 intake — community service — records.

7 1. A person who receives a civil citation shall report for  
8 orientation at the time and place specified by the prearrest  
9 diversion program. Orientation may include but is not  
10 limited to any combination of the following: an assessment,  
11 intervention, educational instruction, or a mental health or  
12 substance abuse-related treatment.

13 2. After the completion of orientation, the person may  
14 be required to perform the number of community service hours  
15 specified by the prearrest diversion program.

16 3. If the person does not complete orientation and the  
17 community service hours required within a specified time  
18 period, the law enforcement agency issuing the civil citation  
19 shall criminally charge the person with the criminal offense  
20 that prompted the issuance of the civil citation and the  
21 criminal offense shall be referred to the county attorney for  
22 criminal prosecution.

23 4. a. If the person successfully completes the requirements  
24 of the prearrest diversion program, an arrest record shall not  
25 be associated with the commission of the underlying criminal  
26 offense.

27 b. The fact of issuance of a civil citation or information  
28 regarding the underlying criminal offense that prompted the  
29 issuance of the civil citation shall not appear in or be  
30 considered a part of a person's arrest data, correctional data,  
31 or disposition data under chapter 692, upon the successful  
32 completion of the requirements of a prearrest diversion  
33 program.

34 c. The court's record, if any, of the issuance of a civil  
35 citation or the underlying criminal offense that prompted the

1 issuance of the civil citation shall be expunged as defined  
2 in section 907.1, upon the successful completion of the  
3 requirements of a prearrest diversion program.

4     Sec. 6. NEW SECTION. **905A.5 Criminal offenses eligible for**  
5 **prearrest diversion program.**

6     A simple misdemeanor offense or similar local ordinance  
7 is eligible for a prearrest diversion program, except the  
8 following simple misdemeanor offenses or similar local  
9 ordinances shall not be eligible for a prearrest diversion  
10 program:

11     1. Possession of drug paraphernalia in violation of section  
12 124.414.

13     2. Domestic abuse assault in violation of section 708.2A,  
14 subsection 2, paragraph "a".

15     Sec. 7. NEW SECTION. **905A.6 Fees.**

16     1. A person placed in a prearrest diversion program shall  
17 be required to pay an enrollment fee of three hundred dollars  
18 to the judicial district to offset the costs of the program.  
19 In addition to the enrollment fee, the district department may  
20 require a person to pay a fee to the district department to  
21 offset the costs of providing other programming to the person.

22     2. Each district department shall retain fees collected for  
23 administrative and program services.

24     3. The department of corrections may adopt rules on behalf  
25 of a judicial district for the administration of this section.  
26 If adopted, the rules shall include a provision for waiving the  
27 collection of fees for persons determined to be unable to pay.

28     Sec. 8. NEW SECTION. **905A.7 Immunity — peace officers**  
29 **defended.**

30     1. A civil or criminal action shall not be commenced against  
31 a peace officer for exercising discretion under section 905A.3.

32     2. Section 670.8 shall apply to a civil or criminal  
33 action commenced against a peace officer for exercising such  
34 discretion.

35

EXPLANATION

1           The inclusion of this explanation does not constitute agreement with  
2           the explanation's substance by the members of the general assembly.

3       This bill relates to the establishment of prearrest  
4 diversion programs for certain simple misdemeanants.

5       The bill permits the board of directors of a judicial  
6 district department of correctional services to establish a  
7 prearrest diversion program.

8       Under the bill, the prearrest diversion of a criminal  
9 offender begins with the issuance of a civil citation. The  
10 bill provides that a person may be issued a civil citation,  
11 at the sole discretion of a peace officer, in lieu of issuing  
12 a criminal citation or making arrest for certain simple  
13 misdemeanors or similar local ordinance, if the person accepts  
14 responsibility for the commission of the criminal offense, the  
15 person has not been previously been arrested as an adult for  
16 such an offense, and a prearrest diversion program has been  
17 established by the board of directors of the judicial district.

18       The bill provides that a person's acceptance of  
19 responsibility for the commission of the criminal offense shall  
20 not be considered a confession and shall not be admissible in a  
21 criminal prosecution for the underlying criminal offense.

22       The bill specifies that a civil citation is not subject to  
23 examination or disclosure under Code chapter 22.

24       The bill prohibits the participation of a criminal offender  
25 in the program if the criminal offense involves a victim and  
26 the victim objects to the participation.

27       Under the bill, a person who receives a civil citation  
28 shall report for orientation at the time and place specified  
29 by the prearrest diversion program. The bill specifies that  
30 orientation may include but is not limited to any combination  
31 of the following: an assessment, intervention, educational  
32 instruction, or mental health or substance abuse-related  
33 treatment.

34       After completion of orientation, the person may be required  
35 to perform community service hours specified by the prearrest

1 diversion program.

2 If the person does not complete orientation and the  
3 community service hours required, if any, within a specified  
4 time period, the bill requires the law enforcement agency  
5 issuing the civil citation to criminally charge the person with  
6 the criminal offense that prompted the issuance of the civil  
7 citation, and the criminal offense shall be referred to the  
8 county attorney for criminal prosecution.

9 If the person successfully completes the prearrest diversion  
10 program, the bill prohibits an arrest record to be associated  
11 with the commission of the criminal offense that prompted the  
12 issuance of the civil citation.

13 The bill further specifies that the issuance of a civil  
14 citation or the underlying criminal offense that prompted  
15 the issuance of the civil citation shall not appear in or be  
16 considered a part of a person's arrest data, correctional data,  
17 or disposition data under Code chapter 692, upon the successful  
18 completion of a prearrest diversion program.

19 The bill also provides that the court's record, if any, of  
20 the issuance of the civil citation or the underlying criminal  
21 offense that prompted the issuance of the civil citation  
22 shall be expunged as defined in Code section 907.1, upon the  
23 successful completion of the prearrest diversion program.

24 The criminal offenses eligible for the issuance of a civil  
25 citation under the bill include all simple misdemeanors or  
26 violations of similar local ordinances except for possession  
27 of drug paraphernalia in violation of Code section 124.414 or  
28 domestic abuse assault in violation of Code section 708.2A.

29 The bill requires a person placed in a prearrest diversion  
30 program to pay an enrollment fee of \$300 to the judicial  
31 district to offset the costs of the program. In addition to  
32 the enrollment fee, the bill allows the judicial district to  
33 charge a fee to offset the costs of other programming provided  
34 to the person placed in the program. The bill allows the  
35 judicial district to retain the fees collected pursuant to the

1 bill. The bill provides that the department of corrections  
2 may adopt rules on behalf of a judicial district to administer  
3 the bill, but any rules, if adopted, shall include a provision  
4 for waiving the collection of fees for persons determined to  
5 be unable to pay.

6 The bill prohibits the commencement of any civil or criminal  
7 action against a peace officer for exercising discretion when  
8 issuing a civil citation in lieu of a criminal citation. The  
9 bill also requires the governing body to defend a peace officer  
10 from civil actions filed against the officer for issuing a  
11 civil citation in lieu of a criminal citation under the bill.